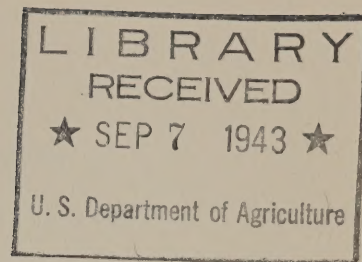


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RHODE ISLAND STATE MILK CONTROL ACT

Introduction

This is the ninth of a series of papers designed to make available, in a condensed and convenient form, information concerning State milk control acts, the type of regulations issued thereunder, and, in general the legal developments in connection with their administration and enforcement.

The series, to date, includes a paper on each of the following State controls: Indiana, Alabama, Connecticut, California, New Jersey, Virginia, New York, and Pennsylvania. Other papers are in process of preparation, there being at the present time some twenty States having milk control laws.

It is expected that a general summary of all the State acts and regulations will be prepared when the review of individual State acts and regulations is completed. In this connection some comparison may be made. These papers omit much detail which might be helpful to those concerned with legislative or administrative problems of State milk control. Those who desire more complete information will undoubtedly find it to their advantage to get in touch with the officials charged with the administration of these acts.

STATE MILK CONTROL IN RHODE ISLAND
THE ACT, ITS ADMINISTRATION AND LEGAL STATUS

PART ONE

I. General Character of Legislation.

Through emergency legislation in 1934^{1/}, followed by a permanent act in 1936,^{2/} the State of Rhode Island has provided a program of supervision and control over the handling of fluid milk and fluid cream.

In placing the act on a permanent basis the General Assembly recites the grounds on which the act of 1934 was based, the salutary accomplishments by virtue of that act, and declares that the conditions which prompted the passage of the original act are still present, thus necessitating that act or a similar law to prevent the recurrence of a menace to the welfare and reasonable comfort of the people. The act of 1934 in its enacting clause declares: (1) that unfair, destructive, and uneconomic trade practices in the handling of milk and cream menace the welfare and reasonable comfort of the people of Rhode Island "so that an acute economic emergency is hereby declared to exist"; (2) that therefore the production and handling of milk and cream within the State are declared to be a business affecting the public health, welfare and general interest of all Rhode Island people; and (3) that the creation of a board of milk control is the means of alleviating the immediate and impending danger to the public health and welfare.

Type of Governing Agency

The Board of Milk Control consists of five members, as follows: the Director of the State Department of Public Health, the Director of the Department of Agriculture and Conservation (these two being members ex officio and serving without pay), a milk producer, a milk distributor, and a milk consumer. These last three members are appointed by the Governor to serve until January 1938, they or their successors then to be biennially appointed by the Governor. Each appointed member of the board receives \$500 annually and is required to file an approved bond conditioned upon the safekeeping and lawful application of all moneys collected by the board. Subject to the provisions that as far as possible technical and legal assistance shall, when required, be engaged from "the present State department" and that the entire cost of administration shall in no event exceed the aggregate amount of fees collected in any year, the board may employ necessary clerks and other assistants.

^{1/} Chapter 2089, Public Laws, January Session, 1934, approved May 5, 1934, expiration date March 31, 1936.

^{2/} Chapter 2310, January Session, 1936, approved March 31, 1936. Permanent act, no expiration date.

Conditions Under Which Powers of Board May Be Exercised

In all matters over which it has jurisdiction the board is authorized to act on its own initiative in accordance with the procedure prescribed. Its powers are nowise contingent on any expression of approval or disapproval by producers, cooperatives, dealers, or consumers.

Source of Financing

The expenses of the board and its assistants are met by money collected by the board in the form of license fees and monthly volume assessments in each case paid solely by licensed dealers.^{3/} The license fee is \$1.00,^{4/} the volume fee is an amount not exceeding two cents per hundred-weight, based upon the monthly total quantity of milk sold as fluid milk or cream.

Statutory Protective Provisions

The validity of the act is sought to be preserved by the inclusion of, first, a separability clause to the effect that if any portion is held to be invalid the remaining provisions shall not be affected, and, second, a saving clause declaring that nothing in the act shall apply or be construed to apply to foreign or interstate commerce, except as may be effective in accordance with the United States Constitution and laws of the United States enacted pursuant thereto.

II. Regulatory Provisions.

Powers of the Board

Investigation.— The board is vested with power to investigate "all matters pertaining to the production, importation, storage, transportation, disposal, distribution, and sale of milk^{5/} within the State as may be necessary or convenient to carry out the provisions of this act." To implement its investigatory power the board may (1) subpoena producers, dealers, or anyone having or deemed to have knowledge of any violation of the act or information which in the judgment of the board will aid in more effective administration of the purposes of the act; (2) compel the production of books, records, accounts, and other papers "deemed pertinent

^{3/} "Dealer or distributor," as defined by the act, "means any person, firm, corporation or association, irrespective of whether he or it is a producer, or an association of producers, whether within or without the state, engaged in the business of distributing milk, or any manner of handling, in whole or in part, whole milk or cream, for consumption in this state. A producer who delivers milk to a milk dealer only shall not be deemed a milk dealer."

^{4/} The license fee is registration, not an annual, license fee.

^{5/} "Milk," as defined, "means liquid milk and/or cream, fresh, sour, or storage; skimmed milk and buttermilk, irrespective of whether or not any such milk is flavored." Cream is defined as "all milk or cream containing more than 6% butterfat"; "heavy cream", as defined, "means cream containing not less than 38 percent butterfat."

to any investigation"; (3) administer oaths to witnesses and, through prescribed court procedure, compel testimony to be given with respect to any lawful question; and (4) "enter, at all reasonable times, places where milk is produced or handled for commercial purposes and to examine personally, or by any employee designated in writing, any books, papers, documents or other writings which relate to milk handled for the aforesaid purposes." There is no provision in the law that the information thus secured shall be treated as confidential.

Mediation and arbitration.- The words "mediation" and "arbitration" do not occur in the act. Mediation, however, is implicit in the provision that the board "shall endeavor to affect (effect) amicable reconciliation of differences which exist between the various milk interests."

Cooperation with other authorities.- The board is authorized to confer with legally authorized authorities of other States and of the United States with respect to uniform milk control within the States and to conduct joint investigations, hold joint hearings, issue joint or concurrent orders, and enter into one or more compacts for such uniform milk control, subject to such Federal approval as may be authorized or required by law.

Licensing powers.- With two exceptions, the board is vested with power to license every dealer selling milk within the State. It is mandatory that every such person shall make written application for and obtain a license before handling milk. The two exceptions are in the case of any person, firm, or corporation producing or selling milk for consumption only on the premises of the producer or seller and in the case of any store obtaining all its milk from licensed dealers. The act provides that, in making application, the applicant shall agree to comply with the requirements of the act, and, "in the event of the failure or alleged failure of said applicant so to do, the board, after due notice and opportunity for hearing, may revoke or suspend the license of the applicant."^{6/} There are, in addition, at least 13 other grounds upon which the board may decline to grant a license or may suspend or reject one already granted, including: (1) violation of minimum price schedules; (2) rejection of milk contracted for; (3) false statements intentionally made at any hearing of the board or made in writing with respect to applicant's business or conduct; and (4) failure or neglect to keep records or accounts or to make reports.

The act requires that no license shall be issued to a foreign corporation unless it shall have qualified to do business in the State as provided by law.

^{6/} In case no license has previously been granted, the board apparently could also refuse to grant the license.

Records and reports.- The board is empowered to require "dealers and sellers of milk" to make periodic reports in respect to the kinds, amounts, and prices of milk bought or sold and other pertinent facts, and all such persons shall be under a duty to keep accurate books and records concerning all matters required to be stated in the reports.

Bonding of dealers.- There is no provision in the act requiring that licensees shall be bonded.

Powers in Regard to Price Regulation

Prices to be charged by producers.- Before establishing minimum prices "to be charged for milk distributed for sale within the state for fluid consumption, wheresoever produced . . ." by producers selling to dealers - or consumers, the board is required to make investigation and hold public hearing. Prices shall apply to the various grades and classes and may vary in the several markets and localities of the State. Schedules of such prices are to be furnished to all registered dealers and be published in appropriate newspapers throughout the State, such publication constituting an official order in respect to such prices. No standards are laid down to guide the board in fixing producer (or resale) prices, except that the board is given power to impose only reasonable regulations.^{7/}

Method of payment to producers.- There is little in the act regarding the method of payment to producers. Base-rating or market-wide pooling is not specifically authorized. The only direct reference made to the manner of payment is that, unless otherwise ordered by the board, producers shall be paid for periods ending semimonthly on the 15th and the last day of each month and not later than 30 days after the close of each such pay period. Inasmuch as "class-use" pricing is authorized it is apparent that where milk is thus priced there appears to be legal authority for payment by dealers on the basis of an individual dealer pool.

Resale prices.- The board, under the same conditions as in the case of producer prices, is authorized to fix minimum resale prices to be charged by: (1) dealer to stores either for consumption on the premises or resale to consumers; (2) dealer to consumer; (3) stores to consumers; (4) wholesaler to retailer; and (5) by any other person to another person for commercial purposes.

Powers in Respect to Unfair Competition and Trade Practices

The words, "unfair competition" or "unfair trade practices," are not

^{7/} While the language quoted may appear to indicate that the price regulations apply only to the seller, subsequent language clearly indicates that the observance of price regulations rests on both buyer and seller.

specifically mentioned in the act. However, this act, as is the case with many other State milk control acts, sets forth as grounds for declining to grant or for suspending or rejecting a license, certain practices or conditions which are frequently included in the usual concepts of unfair trade practices. Under such an act certain practices may be suppressed upon discovery by the board because they are specified and prohibited by the act rather than because they are branded as unfair, and therefore illegal, by an administrative body in applying its reasoned judgment to a set of facts, pursuant to an act which prohibits such practices without defining them.

Limitations and Exceptions

An important limitation in the act is the provision that the law shall in no way affect the status of existing State, city or town laws, ordinances or regulations "governing the production, transportation, processing, storage, distribution and sale of milk and cream" By this is meant, though not specifically stated, all health and sanitary laws and ordinances and such other legal and regulatory requirements in respect to milk and cream as are in effect, exclusive of the milk control act.

Two exceptions have been noted (under "Licensing powers") in the case of anyone producing or selling milk for consumption only on the premises of the producer or seller and any store obtaining all its milk from licensed dealers - these being exempted from the licensing provision and from certain provisions requiring the keeping of records and the making of reports. Another exception is that any producer selling on the premises where produced less than 20 quarts per day to consumers, shall not be included in the requirement for payment of license fee and fee based on volume of sales. The act also provides that "cream to be used in manufacturing" shall not be subject to the requirement, applicable to fluid cream, that any person desiring "to manufacture cream"^{8/} for sale within the State shall first secure a permit issued by the Director of the State Department of Agriculture. In addition, milk utilized or sold in the form of butter, cheese or ice cream shall not be included in the determination of license fee^{9/} but only the fluid sales of milk and cream shall be included in such determination, and such is the case also in respect to sales of milk and cream outside the State. Finally, there is a limitation on the power of the board in that it may not prevent the giving of milk in charity.

Violation

Unlawful acts.- Two acts are specifically declared unlawful: (1) any method or device whereby milk is bought or sold at prices less than

^{8/} This phrase, "to manufacture cream," apparently means "separate cream from milk."

^{9/} The fee based on volume of sales is evidently the one here termed "license fee". Elsewhere, this term is applied only to the registration fee of \$1. See "Source of Financing," above.

the scheduled minimum applicable to the transaction;^{10/} and (2) to sell milk, after it has "come to rest" within the jurisdiction of the State, "at a price lower than prices established by this act." Prohibited, though not specifically designated unlawful, are (1) the buying or selling of milk at less than scheduled prices after the board, by publication in appropriate newspapers, has issued an official order in respect to such schedule of prices; and (2) the refusal, except through uncontrollable causes or upon 15 days' written notice, of a producer to deliver or a dealer to accept milk (if of marketable quality) contracted for by the parties or theretofore delivered and accepted by them in accordance with a previous course of dealing.

Penalties.- The following penalties are provided for violating any provision of the act: (1) Fine not exceeding \$50 for the first violation; (2) for any subsequent violation, fine not exceeding \$500 "and, in addition thereto, (he may) have his license refused, suspended or revoked."

Legal Remedies

Board.- The board, in several instances, is specifically authorized to apply to the courts for enforcement of the provisions of the act or of regulations issued thereunder. It may, for example, apply to the Superior Court within the county of Providence for an order compelling a subpoenaed person to testify, such person being, upon proper proof of noncompliance, punishable for contempt. Also any board member, or duly authorized agent of the board, may file written complaint in behalf of the board as complainant in the district court within the district where any violation of the act is alleged to have been committed, without being required to file bond or furnish surety for costs.

Aggrieved parties.- As a first step in adjusting grievances, the board is required to hold regular meetings at which time shall be set apart wherein any dealer, producer, or consumer may present his complaints. In addition, any aggrieved person may, within a specified time limit, appeal from any decision, ruling, or action of the board to the Superior Court for the county of Providence, the court hearing and determining the appeal in accordance with "the course of equity and subject to all rights of parties in said cause."

A remedy of a very different nature is afforded any interested person aggrieved not by any action of the board but by any alleged violation of the provisions of the act. Under specified conditions such a person may file written complaint with the board, whose duty it shall be unless it regard the complaint as frivolous, to investigate and determine whether or not there has been such violation and if so to suspend or revoke the license of the violator.

^{10/} Under this provision not only the dealer but the producer as well can presumably be prosecuted for the commission of the unlawful act.

Status of Cooperative Associations of Producers

The words, "cooperative association", occur only in the provision that where such an association, or any person, firm or corporation, sells milk to any buyer who is not a dealer, it shall be bound by all rules, regulations, and minimum price schedules applicable to a dealer. In defining "dealer" the term, "an association of producers", is used (see definition in footnote 3 above). These are the only references made in the act to producer cooperatives or associations of producers.

PART TWO

I. Administrative Procedure, Rules, Regulations, and Orders.

Extent of the board's authority.- The authority of the board has been exercised generally throughout the State. In each of the five counties - Bristol, Kent, Newport, Providence, and Washington - the principal cities and towns have been designated as marketing areas for the purpose of fixing minimum prices to be paid producers by dealers and to be charged at resale.^{11/}

Persons controlled or affected.- All milk dealers, except those exempted by the act, are required to be licensed and include (by definition) retail and wholesale distributors, producer-distributors, and stores except stores obtaining all their milk from licensed dealers.

Classification for purposes of price determination.- In the matter of resale schedules, official orders of the board collectively include the following classifications: Milk, Grade A milk, Certified milk, Buttermilk, Skim milk, Flavored milk, Chocolate or Coffee milk, Cream, Cream (designated heavy, medium, and light), Sour cream, and Cultured sour cream. For resale purposes milk is also "classified" from the standpoint of use by charitable or welfare agencies and of sale by the producer selling directly to consumers at the place of production.

In establishing minimum prices to be paid producers by dealers, two classes of milk are established, though not defined, viz., Class I and Class II. In addition, Grade A milk (not defined by the board) is priced

^{11/} In a "Notice to Dealers", dated April 8, 1935, the attention of all dealers buying milk in the State was called to the producer price provisions then obtaining in the Providence area (Official Order No. 6, paragraph #3), and "all persons buying milk produced within Rhode Island" were notified that they would be required to comply with such provisions. The general effect of this notice was modified by subsequent orders.

separately, in many official orders, and at a higher price than in the case of Class I milk.

No base rating or market-wide pooling.- As would be expected from the fact that the law contains no specific or implicit provisions authorizing either base rating or market-wide pooling, no order of the board provides for the use of these equalization mechanisms.^{12/}

Trade practices.- The board until recently has taken no position administratively in respect to unfair methods of competition and unfair trade practices except to furnish copies of the act to violators, calling their attention to the particular sections and paragraphs which have been violated. In recent official orders of the board a provision has been included, taken from the act, in which it is ordered that no method or device shall be used whereby milk and/or cream is sold at prices less than the scheduled minimum applicable to the transaction, whether by any discount, rebate, free service, advertising allowance, combination price for milk with any other commodity, or for any other consideration.

Records and Reports

Official orders of the board contain no provision with reference to the keeping of records or the making of reports by dealers. The law, however, is explicit, and it is the policy of the board to be governed by the law and to use it as a basic guide in the board's procedure. Under the act the board is empowered to prepare and furnish all registered dealers and persons engaged in selling milk in the State with uniform report blanks to be periodically filled out and filed with the board and which, among other matters, shall disclose quantities, grades and classes of milk handled, prices received or paid, and amounts due for purchases or sales of such milk. Without reference in its official orders to this provision of the law, the board has prepared and furnished the applicable blanks and has, it is understood, secured substantial compliance.

Hearings

No rules or regulations of administrative procedure have been issued by the board in respect to hearings.^{13/} In each order designated "official"^{14/} fixing prices to be charged or paid for milk, there is a preamble which recites that the order has been issued after such investigations and proofs as the emergency permits and after notice and public hearing.

^{12/} In official orders of the board in effect in the Providence and Newport marketing areas at the time these areas were under Federal licenses, there is no reference made to base rating or equalization, although both were included in the Federal programs.

^{13/} This is also the case with respect to all other matters. As previously stated, the board has been governed by the act and has used it as the basic guide in all procedure.

^{14/} But not in "Notice to Dealers" of April 8, 1935 (see footnote 11).

PART THREE

Legal Status

The constitutionality of the act has not been successfully challenged in the courts. In enforcement proceedings the board has been unusually successful. In a report made last summer on prosecutions it was stated that in 13 of 16 cases prosecuted by the board the defendant had pleaded guilty and had either received a fine or been placed on probation by the court. Of the three of the 16 cases where the plea was "Not guilty," one case was discontinued, one case resulted in a verdict favorable to the board and in a fine for the defendant, and the third case, involving some question of constitutionality of the act, is understood to be pending on appeal from the District Court to the Superior Court. In addition to these cases, the board has recently prosecuted one case for the selling of milk without a license and four cases for violation of minimum price provisions. Trials are pending in two cases, while in the others the violators were fined after pleading "Not guilty."

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